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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Implementation of Section 309(j) of the)
Communications - Competitive Bidding)

Amendment of the Commission's Cellular)
PCS Cross-Ownership Rule)

Implementation of Sections 310 and 332 of)
the Communications Act Regulatory)
Treatment of Mobile Services)

PP Docket No. 93-253

GN Docket No. 90-314

GN Docket No. 93-752

To: The Commission

**COMMENTS OF UNITEL CELLULAR COMMUNICATIONS SYSTEMS, INC.
IN THE FURTHER NOTICE OF PROPOSED RULEMAKING**

Unitel Cellular Communications Systems, Inc. ("Unitel"), a prospective applicant/bidder and manager for licenses awarded through the "C Block" PCS Auction, hereby submits its comments in response to the Commission's *Further Notice of Proposed Rulemaking*.^{1/} Based on Unitel's considerable experience with telecommunications equipment vendor financing, and the terms related thereto, Unitel has concluded that equipment vendors will not agree to finance equipment and working capital requirements for the "C Block" PCS licensees unless the Commission agrees to subordinate the debt which the licensee owes on the Auction bid. Accordingly, Unitel respectfully requests that the Commission take this opportunity to state clearly that it will allow equipment vendors and banks, which lend funds for the equipment and operating capital needed for PCS systems, to hold a first priority lien position, ahead of the licensees' obligation to the Commission to pay any balance owed on the license bid.

I. Background

1. In the referenced Rulemakings and those which preceded them, the Commission

^{1/} Unitel's Comments are timely filed.

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has strived gallantly to create vehicles and structures which will assist small businesses in competing with large companies in the provision of PCS services. Notwithstanding the adjustments mandated by the courts, the Commission's actions have been properly focused on attempting to create a "level playing field" so that small and large companies alike can compete in the evolving PCS industry. Those efforts have gone a long way to achieving the desired result. However, one glaring omission is the Commission's failure to clarify its willingness to subordinate its debt to that of the vendors. The FCC's practice of allowing licensees to make installment payments on their obligations to the government is a new phenomenon. It is absolutely critical that the Commission provide clear guidance as to its willingness to allow equipment vendors and banks which lend funds to "C Block" licenses for the equipment and operating requirements of the new PCS systems to hold a first priority lien position, notwithstanding the fact that the licensees' debt to the government will precede the lenders debt it in time.

2. Such a result is not at odds with any Commission Rule or case precedent and would open the door for "C Block" licensees to obtain equipment vendor and bank financing which is, in the end, a much more substantial portion of the cost of developing a PCS license, than is the payment to the government for the license bid price^{2/}. As noted in the attached Declaration of Michael B. Azeez, the equipment vendors and banks will require a first priority lien position, and without their financing "C Block" licensees will never become the competitive PCS providers which the Commission envisions.

II. There is Neither Any Requirement Nor Case Precedent Under the Rules For the Government To Require a First Priority Lien Position.

3. The Commission's debt collection rules and procedures, set forth in 47 C.F.R. Part 1, Subpart 0, do not include any statement or suggestion that mandates that the Government

^{2/} See Congressional Budget Office Study, "Auctioning Radio Spectrum," March 1992, Chapter 3.

require a first priority lien position on the collection of Auction bid payments. In fact, Section 1.914(a) "Collection in Installments" states:

- (i) If the Commission agrees to accept payment in regular installments, it will obtain a legally enforceable written agreement from the debtor which specifies all of the terms of the agreement and which contains a provision accelerating the debt in the event the debtor defaults."

Clearly, such an agreement, even including an acceleration clause, does not require a first priority lien position on the licensee's assets (e.g. equipment and bank accounts)

4. One service which the Commission has recently licensed by auction, and which included installment payments, is Interactive Video and Data Service ("IVDS"). The IVDS rules, as well as the actual license authorizations themselves, do not contain any indication that the Commission requires any secured position, vis-a-vis the assets of the licensee or the system. Accordingly, there is neither any rule nor case precedent for mandating that the Commission obtain a first priority lien position for the debt owed by PCS "C Block" licensees.

III. Commercial Financing Realities Mandate That The Commission Accept a Second Security Position.

5. The Commission should recognize that the realities of commercial lending in the telecommunications industry necessitate that PCS licensees be in a position to offer to banks and equipment vendors a first security lien position. As supported in the Mr. Azeez's Declaration, if the Commission does not agree to subordinate its debt position in favor of the security position of the equipment vendors, the most likely result is that the vendors will abandon the "C Block" licensees in favor of the A and B Block licensees who are not encumbered by superior lien positions held by the government. At a minimum, one can anticipate that any vendor financing the "C Block" licensees do secure will be more expensive, owing to the higher risk which the vendors must assume as holders of a less secure debt instrument. This result will adversely affect the C Block licensees ability to compete with the A and B Block licensees because they will likely have paid more for their equipment; be required to maintain higher banking balances; have less working capital to invest in developing their footprint and their subscribers; and, generally,

have less financial muscle and flexibility in competing for the PCS business in the market.

IV. The Commission's Position On This Important Issue Must Be Clarified.

6. Despite the fact that many parties, formally and informally, have sought a clearer understanding of this Rule and confirmation that equipment vendors may take first priority lien positions, the Commission's responses have been unclear. In fact, depending upon with whom you talk, the answers range from yes-to-no-to-maybe.

7. As noted in Mr. Azeez's Declaration, based upon his conversations with equipment vendors, "C Block" licenses will find themselves without vendor financing to build and operate their PCS Systems unless the Commission clarifies this issue. Equipment vendors, like any creditor will not accept a "maybe" on the question of its ability to take a first priority lien position. Accordingly, it is imperative that the Commission take this opportunity to clarify the fact that the Commission will agree to subordinate its security rights to those of the vendor.

8. In its PCS Rulemaking, the Commission has "clarified" that

"lenders and entrepreneur's block licenses are free to agree contractually to their own terms regarding situations where the licensee has defaulted under the Commission's installment payment program, and possibly other obligations. As long as there is no transfer of control, we would not become involved in the particulars of a voluntary workout arrangement between a designated entity and third-party lender." Fifth Memorandum Opinion and Order, FCC 94-285, ¶ 132.

The Fifth MO&O also provided that:

"an entrepreneurs' block licensee and its lenders may agree that, in the event the licensee defaults on its installment payments, the lenders to that licensee will cure this default by assuming the designated entity's payments to the government. Barring any transfer of control, we would not object to such an arrangement." Id. ¶ 133.

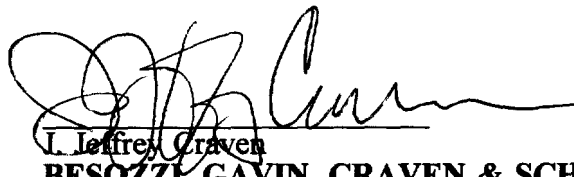
9. These "clarifications" fail to provide clear notice that the Commission will allow equipment vendors to acquire a first priority lien position from the start. Since the equipment vendor financing requirement for a first priority lien position appears to be non-negotiable, and owing the Commission's substantial interest in fostering the development and competitiveness of

the C Block licensees, the Commission should recognize that it loses nothing and gains a great deal by permitting the equipment vendors to obtain the security position it needs as a commercial lender. In the end, the C Block will be more competitive and the Commission's debt will likely be even better protected by engaging the equipment vendor in the process. That way, any default situations can be worked out with more money and interested parties at the table. This result would improve the likelihood that any defaults may be averted, and competition expanded which, of course, is in the public interest.

WHEREFORE, these premises considered, Unitel is respectfully requests that the Commission accept these Comments in the referenced Rulemaking.

Respectfully submitted,

**UNITEL CELLULAR COMMUNICATIONS,
SYSTEMS, INC.**

A handwritten signature in black ink, appearing to read 'I. Jeffrey Craven', is written over a horizontal line.

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Dated: July 7, 1995

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ATTACHMENT A

DECLARATION

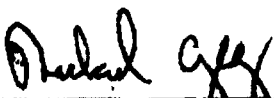
I, Michael B. Azees, do hereby declare under the penalty of perjury, as follows:

1. I have been involved in the cellular telephone industry for the past 13 years. I have built and arranged the financing for numerous cellular telephone systems over that period, through the use of equipment vendor and bank financing vehicles. Several of these systems continue to be owned or operated by me or my company.

2. I have talked with equipment vendors and banks about their interest in providing PCS equipment and operating capital to Designated Entities ("DE") who win C Block Auction PCS licenses. Without exception, they are hesitant to provide financing unless they would be entitled to a first priority lien position on the assets of the PCS system. If experienced operators such as myself, with substantial personal and professional banking and equipment vendor relationships, cannot get financing for PCS C Block licenses without offering them a first priority lien position, virtually all DE licensees will be in trouble when it comes to equipment financing, which is a critical component to the successful development of a PCS system. Accordingly, the FCC needs to clarify its rules to indicate that it will subordinate the unpaid balance due on the license bid, in favor of the security position of the equipment vendor.

3. In summary, in my opinion, if the FCC does not agree to subordinate their position, many PCS systems will not be built and those which are able to secure financing will not be able to effectively compete against the MTA license holders. Banks and vendors will be more apt to favor MTA license holders over C block license holders who are not encumbered by government debt. In the end, all of the FCC's efforts to create opportunities for small business and to create an environment which will foster more competition in the provision of PCS services will be for naught and C Block PCS licensees will be left without the financial resources needed to build and compete in the PCS arena.

This Declaration has been prepared at my direction and it is true and correct to the best of my knowledge.


Michael B. Azees
Dated: July 7, 1995

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